IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
UMAÑA *et al.*
Appl. No.: 10/761,435
Filed: January 22, 2004
For: **Fusion Constructs and Use of Same to Produce Antibodies With Increased Fc Receptor Binding Affinity and Effector Function**

Confirmation No.: 3728
Art Unit: 1652
Examiner: Gebreyesus, Kagnew H.
Atty. Docket: 1975.0180003/TJS

Reply to Restriction Requirement

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated **June 13, 2006**, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group III, represented by claims 30-34, 65-95, 128, 129, 186-212 and 216-260. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. Applicants reserve the right to pursue the non-elected claims in one or more divisional applications.

This election is made with **traverse**.

With respect to the Examiner's division of the claims into five groups and the reasons stated therefor, Applicants respectfully traverse. Each of the groups is related. For example, Groups I, II, and III are related as between a fusion polypeptide (Group II), a nucleic acid encoding a fusion polypeptide and related vectors, host cells, and methods of expression (Group I), and a method for modifying the glycosylation profile of a polypeptide produced by a host cell by introducing a nucleic acid encoding a fusion

polypeptide (Group III). The Examiner asserts that Groups II and III are unrelated because "group II is drawn to polypeptide sequence and Group III [is] drawn to a method of modifying the glycosylation profile of a polypeptide using a vector comprising a polynucleotide sequence thus the fusion polypeptide is not used in [the] host cell." (Office Action at page 4.) However, the Group III method of modifying the glycosylation profile of a polypeptide produced by the host cell directly employs the fusion polypeptides of Group II, which are expressed from the nucleic acids and/or vectors of Group I. Therefore, contrary to the Examiner's assertions, Groups I, II, and III are capable of use together and, as such, are related

By way of another example, Groups III, IV and V are related as a method for modifying the glycosylation profile of a polypeptide (Group III), an engineered antibody produced by the method (Group IV), and a method of treating a disease using such an antibody (Group V). Therefore, Groups III, IV and V are also capable of use together and, as such, are related.

Furthermore, all of the claims can be examined without serious burden on the Examiner because a search of the art for the claims of Group III should find art relevant to the claims of any of the other Groups. For example, Groups I through IV are grouped in the same class for search purposes, and Groups I and II are also grouped in the same subclass. Therefore, fewer restriction groups should expedite prosecution without an undue burden on the Examiner.

Even assuming, *arguendo*, that Groups I-V represent distinct or independent inventions, Applicants submit that to search and examine the subject matter of these

Groups together would not be a serious burden on the Examiner. In particular, any art related to isolated nucleic acids, vectors, and host cells comprising sequences that encode fusion polypeptides, as in Group I, is very likely to overlap substantially with art related to fusion polypeptides, as in Group II. Likewise, art related to a method of modifying glycosylation profiles by expressing an isolated nucleic acid encoding a fusion polypeptide (Group III) is very likely to overlap substantially with art related to fusion polypeptides (Group II) encoded by isolated nucleic acids expressed by vectors and host cells (Group I). Accordingly, it would not be an undue burden for the Examiner to search, at a minimum, Groups I, II, and III together. The M.P.E.P. § 803 (8th ed., Aug 2001, Rev. August 2005) states:

> If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

Thus, in view of the M.P.E.P. § 803, Applicants respectfully request that all claims be searched and examined in the subject application. Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such

extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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